IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO. 1053 OF 1991

The Union of India.. ... ... Appellant.

Versus

Shri K. B. Agarwal & Ors.... ... Respondents.

Mr. A. N. Samant for the Appellant.

Mr. S. P. Kanuga for the Respondent No.1.

CORAM : ANOOP V. MOHTA, J.

DATED : 14TH DECEMBER, 2005.

P. C.:

The suit was filed for compensation of Rs.15,000/- for non-delivery of the consignment of 69 tins of chakka sent from Rusdas Station to Pune. The Railway Accident Claim Tribunal by the impugned judgment and order allowed the suit and directed the appellant / respondent therein to pay Rs.13,800/- with proportionate cost and interest on the said amount at the rate of 12 per cent per annum from the date of suit i.e. 20th February, 1984 till date of realisation. Therefore, this appeal by the appellant.

2. Heard learned Counsel appearing for the parties. Admittedly, the appellant led no evidence in the matter. Evidence as well as material available on the record have been taken note of by the learned Tribunal and observed that knowing fully that the goods in question were perishable in nature, there was no specific notice was given to the respondent / plaintiff at the relevant time immediately after the arrival of the goods. There is a clear finding given by the Tribunal that for taking delivery of the goods the plaintiff / respondent visited the respective railway stations on 21st, 22nd and 23rd February, 1981. It is clearly observed that "non arrival" endorsement was given by the appellant’s representative at the station. Thereafter, there was no intimation even by telephone about arrival of the goods. The case, therefore, was made out by the defendant / appellant in written statement that the consignment was ready for delivery on 24th February, 1981 but nobody took delivery till 26th February, 1981. This fact had been rejected by the Tribunal in the finding in answer to Issue No.2 where it was observed that on 24th February, 1981 itself the appellant / defendant gave endorsement of "non

arrival" at the station. Therefore, in view of that endorsement and as admittedly no evidence was led by the appellant, the case of appellant cannot be accepted. In view of this I see there is no reason to interfere with the finding arrived at by the Tribunal while passing the order in favour of the plaintiff / respondent.

3. Learned Tribunal after considering the material on the record based on the decision given by the various courts in such matters of non delivery of goods arrived at a conclusion and granted Rs.13,800/- towards loss of Chakka which was lost in transit. There is a foundation of this amount that the market rate was of Rs.10/- per Kg. for total weight of 1380 Kgs. in 69 tins, 20 Kgs. in each tin. This rate in absence of any contrary evidence needs to be accepted as market rate of the goods in question at the relevant time. Therefore, there is no reason to discard this material available on the record.

4. This being a commercial transaction granting of interest cannot be overlooked in such matters. The rate of interest as granted at the relevant time has been 12 per cent per annum. However, considering the

fact and circumstances of the case, I am inclined to reduce the rate of interest from 12 per cent to 4 per cent per annum.

5. In view of the above, the appeal is partly allowed. The appellant is directed to pay Rs.13,800/- to the respondent with interest at the rate of 4 per cent per annum from the date of filing of the suit till the date of realisation. There shall be no order as to costs.

Sd/-

(ANOOP V. MOHTA, J.)